

DR 25-1-19

DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT CORPS OF ENGINEERS
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SAVANNAH, GEORGIA 31402-0889

DISTRICT REGULATION
NO. 25-1-19

15 April 1996

INFORMATION MANAGEMENT
Savannah District Freedom of Information Act Program

1. Purpose. The purpose of this regulation is to designate responsibilities for all District team members who have custody or responsibility for official records for compliance with the Freedom of Information Act.
2. Applicability. These procedures apply to all Savannah District elements and all field offices under the supervision of the Savannah District having custody of official government records or files.
3. References.
 - a. Title 5, United States Code, Section 552.
 - b. DOD Regulation 5400.7-R, DOD Freedom of Information Act Program.
 - c. Title 32, Part 286, Code of Federal Regulations, DOD Freedom of Information Program.
 - d. AR 25-55, The Department of the Army Freedom of Information Act Program.

This regulation superseded DR 25-1-19, 23 Jul 94

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e. Title 32, Code of Federal Regulations, Part 518--The Army Freedom of Information Act Program.

f. AR 25-1, Army Information Resources Management Program.

4. Background. The following briefly summarizes the basic provisions of the referenced laws and regulations. Further information on definitions and exceptions can be found in those sources. The term DOD component includes the Corps of Engineers, and references to the Corps also include other DOD components.

a. Requirements of the Freedom of Information Act.

(1) Each agency, including the Corps of Engineers, that receives any request for records, which reasonably describes the records and is made in accordance with the above referenced regulations, stating the time, place, fees (references 3b. and 3c.), and procedures to be followed, must make the records promptly available to any person (reference 3a.).

(2) Each agency must determine within 10 working days after the receipt of a request whether to comply with the request and must immediately notify the person making a request of the determination, the reasons for it, and of their right to appeal to the head of the agency any denial determination.

(3) In unusual circumstances the time limits prescribed may be extended by written notice to the person making a request setting forth the reasons for time extension and the date on which a determination is expected to be made. No such notice may specify a delay date more than 10 working days. As used in this subparagraph, "unusual circumstances" means:

(a) The need to search for and collect records from field offices;

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(c) The need for consultation with other agencies having a substantial interest in the request.

b. Records.

(1) Items That Are Official Records (AR 25-55, 1-402). The products of data compilation made or received by the Corps in connection with the transaction of public business and preserved primarily as evidence of the organization, policies, functions, decisions, or procedures of the Corps. See AR 25-1, Section 8-4.

(2) Items That Are Not Official Records (AR 25-55, 1-402; See also AR 25-1, Section 8-4). The following are not included within the definition of the word "record":

(a) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(b) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(c) Commercially exploitable resources, including but not limited to: (i) maps, charts, map compilation manuscripts, map research materials and data if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of the Corps; or (ii) computer software, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of the Corps.

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(d) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials that are available to the public through an established distribution system with or without charges.

(e) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(f) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of agency team members, and not distributed to other agency employees for their official use.

(g) Information stored within a computer for which there is no existing computer program or printout.

c. Exemptions. The Freedom of Information Act provides nine types of information which may be exempt from disclosure. See AR 25-1, Chapter 8, Records Management Policy, for additional information. Generally, the following nine types of records may be exempt from disclosure:

(1) Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized by executive order and implemented by regulations.

(2) Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DOD component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public.

(3) Those concerning matters where a statute specifically exempts records from disclosure, or that are in accordance with statutes providing for withholding particular types of records.

(4) Those containing trade secrets or commercial or financial information that a DOD component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records.

(5) Internal advice, recommendations, and subjective evaluations, but not factual matters, that are shown in records pertaining to the decision-making process of an agency, whether within or among agencies, or within or among DOD components.

(6) Information in personnel and medical files, as well as similar personal information in other files that, if disclosed to the requester, would result in a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

(8) Those contained in or related to examination, operation or condition reports prepared by, and for the use of, an agency responsible for the regulation or supervision of financial institutions.

(9) Those containing geological and geophysical information and data (including maps) concerning wells.

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d. Reasons For Not Releasing Documents. There are seven reasons for not complying with a request for a record:

(1) The request is transferred to another DOD component or to another federal agency.

(2) The request is withdrawn by the requester.

(3) The information requested is not a record within the meaning of the Freedom of Information Act and the regulations implementing it.

(4) A record has not been described with sufficient particularity to enable the DOD component to locate it by conducting a reasonable search.

(5) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by DOD or DOD component supplementing regulations.

(6) The DOD component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (A "no record" determination is considered a denial; therefore notification of appeal rights must be given.)

(7) The record is denied in accordance with procedures set forth in the Freedom of Information Act and the referenced regulations.

e. Denial Tests. To deny a requested record that is in the possession and control of a DOD component, it must be determined that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempted from mandatory disclosure by the Freedom of Information Act as outlined in subparagraph 4. c., above, and further discussed in the referenced regulations.

(2) The use of the discretionary authority is deemed unwarranted.

5. Definitions.

a. Freedom of Information Act Request. A written request for DOD records, made by a member of the public, that either explicitly or implicitly invokes the Freedom of Information Act or referenced regulations specified in paragraph 3, above.

b. Initial Denial Authority. The Savannah District Counsel is the Initial Denial Authority for all requests coming to the Savannah District, with the exception of safety and accident reports for which the Army Safety Center, Fort Rucker, Alabama, is the Initial Denial Authority, and personnel records, for which the Total Army Personnel Command is the Initial Denial Authority. Appeals of denial are made through the Chief Counsel, USACE, to the General Counsel of the Army.

c. Office of Counsel (OC). Office of Counsel is used synonymously with the Freedom of Information Officer or the Alternate Freedom of Information Officer.

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d. Responsible Team Member. That team member, not below Section Chief, who is the official custodian of all files and records in the possession of team members under his or her supervision.

e. Point of Contact (POC). That team member designated by the Responsible Team Member to be responsible for the location, review, and production of documents requested. A Point of Contact should be of a grade GS-8, or above, and have authority to release documents to Office of Counsel without coordinating responses with the Responsible Team Member. A Point of Contact shall have authority to designate or terminate "For Official Use Only" classification of documents within his or her control.

6. Responsibilities.

a. Office of Counsel:

(1) Will prepare all correspondence to persons making requests under the Freedom of Information Act.

(2) Will coordinate all Freedom of Information Act requests to ensure that the Savannah District fully complies with the requirements of these laws.

(3) Will assist Responsible Team Members and Points of Contact in identifying those records that may be exempt from disclosure. If records are located in the district, Office of Counsel will assist in reviewing the files in Office of Counsel.

(4) Will maintain a current list of Points of Contact for Freedom of Information Act requests.

b. Responsible Team Members:

(1) Will appoint a Point of Contact for his or her office and update the appointment when change of team members indicates that a new appointment should be made.

(2) Will budget, as necessary, and provide all resources necessary to comply with the provisions of the Freedom of Information Act.

(3) When receiving a request for records which specifically identifies the Freedom of Information Act, will immediately forward such request to Office of Counsel. Depending upon the nature and length of the request, the responsible team member will transmit or mail the original of the request to Office of Counsel on the day of receipt. If the subject matter is within the scope of the receiving office's records, a copy will also be furnished to the Point of Contact in order that he or she may begin preparation of the appropriate response.

(4) Will advise Office of Counsel by memorandum that he/she has made a diligent and good faith effort to identify and produce the records requested within the time limits prescribed by law.

(5) Will furnish Office of Counsel with requested information on labor used and number of copies furnished.

c. Points of Contact:

(1) Will locate records or documents coming within the scope of the Freedom of Information Act request. If records have been retired or shipped to a records holding area, the Point of Contact will take necessary action to have the appropriate records retrieved.

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(2) Will determine whether any documents specified in the request are designated "For Official Use Only," and consult with Office of Counsel as to whether said designation should be terminated.

(3) Will provide copies of requested records to Office of Counsel for coordination and release. Depending on the circumstances of the request, the number of documents requested, and the availability of copying facilities, the Point of Contact may either submit duplicate copies of the identified documents or one copy accompanied by an index of the documents submitted. For very large numbers of copies, the Point of Contact may make a reproduction request to IM-PR. If records are located in the field, the Point of Contact in the field may transfer the records to the appropriate supervisory element within the District for review.

(4) Will hand deliver documents to Office of Counsel if those documents are within the District headquarters building.

(5) Will account for the hours and manpower used in locating, retrieving, and reproducing the documents requested and submit an accurate count of the number of pages reproduced for billing purposes. Properly accounting for labor and reproduction costs is an integral part of required DOD/DOA Freedom of Information Act procedures.

d. Chief, Information Management Office:

(1) Will assist the Freedom of Information Officer in identifying components where requested records may be located.

(2) Will direct that printing requests identified as Freedom of Information Act responses be given priority over other work in order to meet legal time limits.

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(3) Will ensure that copies of all incoming correspondence referencing the Freedom of Information Act, regardless of addressee, will promptly be furnished to Office of Counsel.

(4) Will expedite any request for retrieval of records from a records holding area.

(5) Will expedite interoffice movement of all Freedom of Information Act correspondence and documents. Interoffice correspondence should be delivered within 1 working day.

e. Chief, Resource Management Division:

(1) Will assign a charge number for each Freedom of Information Act request.

(2) Will establish appropriate accounts for receipt of fees charged for Freedom of Information Act search, review, and reproduction costs.

7. Effective Date. This regulation is effective immediately and will remain effective until rescinded.

GRANT M. SMITH
Colonel, Corps of Engineers
Commanding

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PLUS IM-PR (5)
PLUS OC (50)